

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,810

157

SIDNEY PRIGMORE,

Appellant,

v.

RICHARD A. CHAPPELL, Chairman,
United States Board of Parole, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 13 1962

Joseph W. Stewart

CLERK

(i)

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JOINT APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIDNEY PRIGMORE,
Prison No. 54437
P.O. Box 1000
Leavenworth, Kansas,

Plaintiff,

v.

RICHARD A. CHAPPELL, Chairman,
United States Board of Parole, et. al.,
Washington, D. C.,

Defendants.

Civil Action No. 1767-61

[Rec'd June 3, 1961]

UNITED STATES PENITENTIARY
LEAVENWORTH, KANSAS

May 29, 1961

The Honorable Judge, Presiding
United States District Court
For The District of Columbia
Washington 1, D. C.

Dear Sir:

In accordance with instructions dated April 24, 1961, from the Acting Parole Executive, U. S. Board of Parole, Washington, D. C., all Parole Violators and Mandatory Release Violators who have already received their revocation hearings before the U. S. Board of Parole, without attorney representation, are being interviewed individually and informed that

if they desire, their names will be submitted before the United States Board of Parole for the possibility of another hearing before the Board with attorney representation.

The inmate submitting the enclosed legal action has been so informed.

Very truly yours,

/s/ J. C. Taylor
WARDEN

[Filed June 5, 1961]

Petition for declaration that hearing before United States Board of parole was invalid and asks for a mandatory injunction ordering release from penitentiary at Leavenworth Kansas.

Before the Honorable Judge before
whom these matters shall come

Comes now Sidney Prigmore, hereinafter referred to as petitioner, and seeks of this Honorable Court a declaration that hearing before the United States Board of parole was invalid and asks for a mandatory injunction ordering his release from U. S. Prison at Leavenworth, Kansas.

Statement of facts

Petitioner was Sentenced at Little Rock, Arkansas on February 2 - 1939 to a term of (25) twenty years in the custody of the United States Attorney General.

On December 1-19-54 petitioner was released from the United States penitentiary at Leavenworth, Kansas.

On April 25-1960 petitioner was arrested as an alleged conditional release violator and was returned to custody of United States Attorney General and is now confined in United States penitentiary at Leavenworth, Kansas.

the United States Board of parole granted petitioner a hearing before

one of the members in May 1960 at this hearing petitioner was neither offered or given counsel or advised of his right to counsel if he so desired.

Argument

Petitioner cites Glenn v.s. Reed #16075, United States Court of Appeals, Washington, D.C., as his argument and all cases cited therein petitioners case is identical except for dates as in the above mentioned case.

Petitioner prays this Honorable Court will issue a Declaration that hearing before the United States Board of parole was invalid and will issue a mandatory injunction ordering his release.

Respectfully Submitted

/s/ Sidney Prigmore

State of Kansas)

County of Leavenworth)

Oath of verification

I Sidney Prigmore after first being duly sworn deposes and says the Statements made here on this page and on the foregoing page are true and correct.

/s/ Sidney Prigmore

[JURAT the 29th day of May, 1961].

[Filed July 25, 1961]

MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS

Come now the defendants by their attorney, the United States Attorney, and respectfully move the Court for an order granting a summary judgment in their favor on the grounds that no genuine issue as to any material fact exists as more particularly appears from the affidavit of A. W. Peters, Parole Officer, which is attached hereto and defendants are entitled to a judgment as a matter of law.

In the alternative, the defendants by their attorney, respectfully move the Court for an order dismissing the complaint on the ground that the controversy from which the complaint arose is now moot.

/s/ Burke Marshall
Assistant Attorney General

/s/ Eugene N. Barkin
Attorney, Department of Justice

/s/ David C. Acheson per CLK
United States Attorney of Counsel

[Filed July 25, 1961]

**STATEMENT OF MATERIAL FACTS AS
TO WHICH THERE IS NO GENUINE
ISSUE, PURSUANT TO RULE 9(1)**

Defendants contend that there is no genuine issue as to the following material facts:

1. Petitioner was sentenced to a term of 25 years in the Eastern District of Arkansas on February 2, 1939, for armed robbery of a post office and for assault.
 2. He was mandatorily released from the Medical Center for Federal Prisoners, Springfield, Missouri, on December 1, 1954.
 3. He was arrested as a mandatory release violator on April 25, 1960.
 4. He was afforded a hearing as a mandatory release violator on June 28, 1960.
 5. The plaintiff was not afforded the opportunity to be represented by counsel at this hearing.
 6. On September 2, 1960 plaintiff's mandatory release was revoked.
-

[Filed Aug. 4, 1961]

Plaintiffs opposition to Defendants motion
for Summary Judgement or in the alternative
motion to dismiss

To: the Honorable Judge Presiding

Comes now Sidney Prigmore the plaintiff in the above enumerated case and responding to the Defendants motion for Summary Judgement or in the alternative motion to dismiss; represents to this Honorable Court as follows:

1. that defendant freely admits that plaintiff was without counsel at his revocation hearing held on June 28, 1960 (See Statements of facts defendants at #5).

2. that defendant freely admits that the revocation of petitioners parole was invalid because petitioner was not advised of his right to counsel at the revocation hearing on June 28, 1960. (See defendants memorandum of points and authorities render arguments).

3. the plaintiff freely admits and concedes that he was offered a new hearing with counsel present and the petitioner declined the new hearing.

4. that this hearing with counsel present was offered to petitioner on May 12.-1961 more than one year after petitioner was returned to the custody of the United States Attorney General of the United States (see affidavit of Mr. A. W. Peters parole officer, defendants exhibit).

5. that in regard to counsel defendant and or his agents have taken the attitude that petitioner must furnish his own counsel.

6. Petitioner is unable to pay counsel and therefore could not successfully plead his own case at a new revocation hearing.

7. defendants' motion for a Summary Judgement or in the alternative motion to dismiss should be dismissed and overruled as frivolous and not made in good faith on the grounds the Glenn case did declare the resulting imprisonment of Glenn could not be corrected by an offer of counsel 17 months later the same rule applying to the case of the petitioner since his offer came more than one year later.

Argument

Asuming without conceding that the failure to grant counsel at a hearing does not ipso facto as a matter of law require his release regardless of the subsequent offer by the Board to allow counsel at his rehearing the petitioner takes the position that his constitutional right to counsel was violated in relations to Constitution of the United States of America, Article A of the Bill of Rights.

When he was denied the right to counsel at his revocation hearing and that this violation of the right to counsel entitles petitioner to the release and relief he seeks.

The United States Supreme Court in upholding this right held in *Smith v. J. Grady*, 312 U.S. 329, 61 S. Ct. 572, 1941 and in *McNabb v. U. S.*, 318 U.S. 332, 87 L. Ed. 819, 63 S.Ct. 608 11 the sixth amendment stands as a Jurisdictional bar to a valid conviction and sentence depriving a person of his life or liberty if this requirment of the sixth amendment is not complied with the District Court no longer has Jurisdiction to proceed the Judgment of conviction is void and one imprisoned thereunder may obtain release by habeas corpus.

Bearing in mind that "Violation of the terms of conditional release bring into being a new offense for which one may be punished and such imprisonment is a new Sentence and not part of the original Sentence." *Moorhead v. Hunter*, 1952 -(10th C.t.) 198, F 2d. 52; it then comes to light that the Plaintiffs right to counsel being denied him at the revocation hearing in 1960, is grounds enough for a complete discharge even and assuming again that the Defendant had judicial powers to sentence the petitioner.

further that Defendants position that the plaintiff must furnish his own counsel wheather he is a pauper or not at a new revocation hearing is without fondation in Constitution or Statutory law in that it completely Violates the sixth amendement to the Constitution of the United States.

the controvensen or verfication of the facts upon which petitioners revocation was based is not at issue here the issue is plain. Did or did he not have counsel at his revocation hearing and if he did not were his

constitutional rights to counsel violated if the answer is in the affirmative then this complaint should not be dismissed nor the defendant granted a summary Judgement, but contrarily the complaint should be heard and the plaintiffs request granted.

Conclusion

for the above Stated reasons then the motion for summary Judgement or in the alternative motion to dismiss by the defendant should be overuled and the case brought on for a hearing accordingly it is requested that order overuling the aforsaid motion and Setting a date for hearing on the complaint be entered.

Respectfully Submitted

/s/ Sidney Prigmore

[JURAT the 31st day of July, 1961]

[Filed October 10, 1961]

ORDER

Upon consideration of the request of Sidney Prigmore that counsel be appointed to represent him, it is this 10th day of October, 1961,

ORDERED that /s/ James J. Laughlin is hereby requested to represent Sidney Prigmore in this proceeding.

/s/ Joseph C. McGarraghy
JUDGE

[Filed November 7, 1961]

O R D E R

This Court, having considered the defendants' Motion for Summary Judgment or, in the alternative, Motion to Dismiss, and it appearing to the Court that no genuine issue as to any material fact exists and the defendants are entitled to a judgment as a matter of law, it is by the Court this 7 day of November, 1961;

ORDERED that the defendants' Motion for Summary Judgment be, and it hereby is granted.

/s/ Alexander Holtzoff
JUDGE

[Certificate of Service]

[Rec'd November 18, 1961]

Clerk of Court
U.S. District Court
for the District of Columbia

in Re. Prigmore
V.S. No. 1767-61
Chappell

Dear Sir

inclosed please find notice of appeal from the above case no.

I am this day authorizing the officials of this institution to withdraw five dollars, \$5.00 from my personal funds, for the filing of the notice of appeal, which will be fowardwered to your office at once.

Sincerely

/s/ Sidney Prigmore
54437

[Filed December 7, 1961]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIDNEY PRIGMORE,

Plaintiff

v.

RICHARD A. CHAPPELL, Chairman
United States Board of Parole, et al.,

Defendants

Civil Action No. 1767-61

WILLIAM JULIUS CASWELL,

Plaintiff

v.

RICHARD A. CHAPPELL, Chairman
United States Board of Parole, et al.,

Defendants

Civil Action No. 1911-61

CHESTER A. PEELER,

v.

RICHARD A. CHAPPELL, Chairman
United States Board of Parole, et al.,

Defendants.

Civil Action No. 1663-61

MOTION FOR EXTENSION OF TIME WITHIN WHICH
TO FILE MOTIONS FOR RECONSIDERATION
IN THE ABOVE ENTITLED CAUSES

While the Court has already granted motions for summary judgment in the above entitled causes, the inmates desire to appeal to the United States Court of Appeals for the District of Columbia Circuit. However, we feel that in the light of the recent opinion of the United States Court of Appeals in Reed v. Butterworth, No. 16,178, the opinion being announced after the Court had granted the motions for summary judgment in these causes, plaintiff should be allowed until December 29, 1961 within which to file motions for reconsideration. We have addressed communications to the plaintiffs and have received replies. We will prepare these in proper form.

Therefore, in view of the above, we ask that we be allowed until

December 29, 1961 within which to file motions for reconsideration or other proper pleadings in behalf of the plaintiffs in the above entitled causes.

/s/ James J. Laughlin
National Press Building
Washington 4, D. C.
Counsel for Plaintiffs

[Certificate of Service]

[Filed December 29, 1961]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIDNEY PRIGMORE

v.

RICHARD A. CHAPPELL, Chairman
United States Board of Parole, et al.

Civil Action No. 1767-61

ORDER EXTENDING TIME WITHIN WHICH TO FILE
AMENDED, ADDITIONAL OR SUPPLEMENTAL PLEADINGS

Upon application of counsel for the plaintiffs and for good cause shown, it is by the Court this 29th day of December, 1961,

ORDERED, that the time within which amended, additional or supplemental pleadings may be filed in the above entitled cause be, and the same is, hereby extended to January 31, 1962.

/s/ John J. Sirica
UNITED STATES DISTRICT JUDGE

NO OBJECTION:

/s/ Ellen Lee Park
Assistant United States Attorney

